

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Nancy C. Hardwick,)	C/A No. 4:15-2222-KDW
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
Bank of America, N.A.,)	
)	
Defendant.)	
)	

This matter is once again before the court on the Motion to Dismiss, ECF No. 65, filed by Bank of America, N.A. (“Defendant” or “BANA”) in which it requests that the court abstain from further consideration of the claims brought by Plaintiff, Nancy C. Hardwick (“Plaintiff” or “Hardwick”) in this action because of a pending state-court foreclosure action brought in the Horry County Court of Common Pleas (2010-CP-26-11806) and appealed by Hardwick to the South Carolina Court of Appeals (2015-002413) [hereinafter “Foreclosure Action”]. ECF No. 65.

In considering the Motion to Dismiss, the court became aware of a potential Loss Mitigation/Mortgage Modification Agreement (“LM/MM”) entered between the foreclosure plaintiff, “Ventures Trust 2013-I-H-R by MCM Capital Partners, LLC, its trustee” [hereinafter “Foreclosure Plaintiff”] and Hardwick in Hardwick’s bankruptcy matter (*In re: Nancy Hardwick*, 15-06494-jw), and instructed the parties to provide the status of the potential LM/MM, its impact on the Foreclosure Action, and the impact on Defendant’s pending Motion to Dismiss based on *Younger v. Harris*-type abstention. ECF No. 74.

BANA responded by indicating it could neither confirm nor deny whether Plaintiff had entered an LM/MM or whether the state court appellate matter had been dismissed. In the event Plaintiff had accepted an LM/MM that “results in a final resolution of the state court litigation in

which Plaintiff is involved, BANA agrees that its Motion based on *Younger* abstention would become moot.” ECF No. 77 at 1-2. BANA requests that its Motion be held “open until a final resolution has been reached in Plaintiff’s state court action(s).” *Id.* at 2.

Plaintiff responded to the court’s query and indicated an LM/MM had been granted and is now in effect. ECF No. 79 at 1. Plaintiff provided documents indicating Foreclosure Plaintiff had provided her with a copy of a proposed “Motion and Order Vacating Judgment, Cancelling Lis Pendens, and Dismissing Case,” (see copy of the proposed Motion and Order at ECF No. 79-1), although Plaintiff had not received a signed copy of the Motion and Order, ECF No. 79 at 1. Hardwick further indicated Foreclosure Plaintiff had requested that Hardwick withdraw her appeal from the South Carolina Court of Appeals. *Id.* at 1-2. Hardwick provided a copy of her Motion for Withdrawal of her appeal, which is dated March 9, 2017, and was served by U.S. Mail on that date. ECF No. 79-2. Based on her entry into the LM/MM and the request of vacation and dismissal of the Foreclosure Judgment and the appeal of the Foreclosure Action, Plaintiff submits that BANA’s pending Motion to Dismiss is moot and should be denied. ECF No. 79 at 2.

Having considered the foregoing, the court finds it appropriate to *dismiss as moot* BANA’s pending Motion to Dismiss, ECF No. 65. Judicial economy is not served by having BANA’s dispositive motion remain open at this time. The dismissal of the motion to dismiss is without prejudice to BANA’s re-filing the motion should events transpire that make such a re-filing appropriate.

IT IS SO ORDERED.



March 14, 2017
Florence, South Carolina

Kaymani D. West
United States Magistrate Judge